

CHARLES F. EGGER
JOHN E. JONES
JIMMY R. LYNN II

IBLA 84-710

Decided March 27, 1985

Appeal from decision of the Alaska State Office, Bureau of Land Management, conditionally reinstating noncompetitive oil and gas lease AA-48299-L with amended terms and conditions.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Under 30 U.S.C. § 188(c) (1982), the Secretary is without authority to reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely where the lessee fails to submit the full amount of rental due within 20 days of the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Leases reinstated pursuant to 30 U.S.C. § 188(d) (1982) shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982).

APPEARANCES: Charles F. Egger, John E. Jones, and Jimmy R. Lynn II, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Charles F. Egger, John E. Jones, and Jimmy R. Lynn II appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 11, 1984, conditionally reinstating noncompetitive oil and gas lease AA-48299-L with amended terms and conditions.

The original lease (AA-48299) covering 5,718 acres was issued to Linda S. Kane, effective on March 1, 1983. On June 15, 1983, Kane assigned 40 acres of the lease to appellants, and BLM approved the assignment effective July 1, 1983.

On March 28, 1984, BLM forwarded appellants an oil and gas lease termination notice stating that AA-48299-L terminated on the anniversary date of

the lease, March 1, 1984, for failure to pay the rental in a timely manner. BLM also informed appellants of their right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. § 188(d) (1982) (class II reinstatement). BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II. 1/

1/ The lease termination notice outlined the reinstatement conditions as follows:

"I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

"Your lease may be reinstated under these provisions only if: (1) the rental due is paid or tendered to this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence, (2) that a petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental, is filed in this office within 15 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. If these conditions are met, your lease will be reinstated with the original lease terms and conditions, effective on the date of the termination. If one or more of the above conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

"II. Class II (30 U.S.C. 188(d) and (e); P. L. 97-451, Sec. 401(d)) "Your lease may be reinstated under these provisions only if: (1)(a) the rental is paid within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, (b) if the rental is not paid within 20 days after the anniversary date, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence, (2) that a petition for reinstatement, together with a nonrefundable filing fee of \$25 and the rental and royalty due from the date of termination to the date of petition and payable at the rates set out below, is filed in this office within 60 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

"If these conditions are met, you will have to meet certain other requirements for reinstatement as follows:

"1. You will be required to pay a reinstatement processing fee of \$500 or as provided in regulations in effect at the time the petition is submitted, as well as the cost of publishing a Notice of Proposed Reinstatement in the Federal Register, and,

"2. You must agree to new lease rental and royalty terms:

"(a) For reinstated noncompetitive leases, rental shall be \$5.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of $16 \frac{2}{3}$ percent.

"(b) for reinstated competitive leases, rental shall be \$10.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of $16 \frac{2}{3}$ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease.

"If all these requirements are met, your lease may be reinstated with the amended terms and conditions, effective on the date of termination." (Emphasis in original).

On April 17, 1984, over 6 weeks after the rental payment was due, appellants forwarded \$40 in payment for the annual rental and \$25 for the filing fee. Appellants explained that:

Due to our oversight, the rental of \$40.00 was not paid timely. We were in error assuming that they would be. However, had we received an indication from the Bureau of Land Management notifying us that the rental had not been paid, we would have forwarded the payment promptly. Due to the fact that our failure to pay the rental in a timely manner was not a deliberate attempt on our part to delay the payment or avoid the payment, we ask that our lease be reinstated and that the conditions requiring a reinstatement processing fee of \$500.00, and an increase in rental per acre be waived.

Appellants stated that because BLM's termination notice did not reach them until April 2, 1984, they were unable to comply with the requirement to pay rental within 20 days of the anniversary date. Nevertheless, appellants sought class I reinstatement.

In a May 11, 1984, memorandum to the file BLM analyzed the petition for reinstatement and concluded that because of the late payment "this lease can only be reinstated per the requirements under Class II requirements." Rather than issuing a decision denying class I reinstatement, BLM's decision announced that it was prepared to reinstate appellants' lease pursuant to class II reinstatement terms and conditions. The decision required acceptance of those terms and conditions and provided signature lines for acceptance. While appellants signed the decision on June 5, 1984, indicating acceptance, they also sought review of BLM's decision, requesting that they not be required to comply with the new terms and conditions and, in essence, again asking for class I reinstatement.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease, and where no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2(a) (class I). E.g., Harry L. Bevers, 84 IBLA 158, 160-61 (1984); Leo M. Krenzler, 82 IBLA 205, 207 (1984); Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

Even assuming that appellants could show that the failure to pay was justifiable or not due to a lack of reasonable diligence, class I reinstatement is unavailable to them because of their failure to pay the rental within 20 days after the anniversary date. E.g., Jerry D. Powers, 85 IBLA 116, 119 (1985); Samson Resources Co., 71 IBLA 224, 229 (1983). ^{2/} Therefore, the

^{2/} Although appellants state that if BLM had notified them, they would have paid the rental promptly, there is no requirement that BLM alert lessees of a failure to pay rental such as to allow payment to be made within 20 days after the anniversary date of the lease.

subject lease could only be considered for reinstatement under class II. In its decision dated May 11, 1984, BLM conditionally reinstated appellants' lease pursuant to class II.

[2] Section 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), authorizes reinstatement of leases where payment of the rental is not made within 20 days of the anniversary date, provided certain conditions are satisfied. See 30 U.S.C. § 188(d) (1982); 43 CFR 3108.2-3(a); Maynard J. Bonesteel, 82 IBLA 237, 239 (1984); Kurt W. Mikat, 82 IBLA 71, 72 (1984). BLM's decision conditionally reinstating the lease explicitly set forth each of the new terms and conditions consistent with 30 U.S.C. § 188(e) (1982). In Kurt Mikat, supra at 72, we noted that "the statute [30 U.S.C. § 188(e) (1982)] provides certain conditions precedent to reinstatement under 30 U.S.C. § 188(d)." In Maynard J. Bonesteel, supra at 240, we stated that "reinstatement under 30 U.S.C. § 188(d) shall be made only if certain conditions are met," citing 30 U.S.C. § 188(e) (1982). In Gulf Oil Corp., 83 IBLA 289 (1984), we held that leases reinstated under 30 U.S.C. § 188(d) (1982) shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982). Each of the new terms and conditions set forth by BLM is expressly mandated by either statute or regulation. See 43 CFR 3108.2-3(b)(2)(vi) (requiring \$500 administrative fee); 43 CFR 3108.2-3(b)(2)(v) (requiring payment of costs incurred in publishing notice of proposed reinstatement in the Federal Register); 30 U.S.C. § 188(e)(2) (1982) (requiring a minimum rental of \$5 per acre); 30 U.S.C. § 188(e)(3) (1982) (imposing 16-2/3 percent royalty rate. See Gulf Oil Corp., supra). We therefore conclude that BLM properly imposed the new terms and conditions upon appellants' lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge

